No. 91-781

In The

Supreme Court of the United States

October Term, 1991

UNITED STATES OF AMERICA,

Petitioner,

v.

A PARCEL OF LAND, BUILDINGS, APPURTENANCES AND IMPROVEMENTS KNOWN AS 92 BUENA VISTA AVENUE, RUMSON, NEW JERSEY, AND BETH ANN GOODWIN,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF OF THE DADE COUNTY TAX COLLECTOR, THE DADE COUNTY PROPERTY APPRAISER, AND DADE COUNTY AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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QUESTION PRESENTED

WHETHER, IN A CIVIL FORFEITURE PURSUANT TO SECTION 881 OF TITLE 21, AN INNOCENT OWNER'S INTEREST CAN ARISE AFTER THE DATE OF THE CRIMINAL ACT ON WHICH THE FORFEITURE IS BASED?

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INTERESTS OF THE *AMICI CURIAE*

While not taking a position on the outcome of the particular dispute presented by the facts of this case, the Dade County Tax Collector, the Dade County Property Appraiser, and Dade County respectfully request this Court not to adopt the broad, overreaching interpretation of the relation back doctrine urged by the federal

government.[1] The federal government's interpretation would cause severe and unnecessary harm not only to Dade County but to all state and local governments and schoolboards in the United States that rely upon real estate taxes for revenue.

In its brief, the federal government urges this court to adopt the broad principle that an innocent owner's interest can *never* arise *after* the date of the criminal act on which the forfeiture is based. *See, e.g.*, U.S. Initial Brief at 5, 25, 29. The federal government blithely reassures this Court that such an interpretation "will not result in the confiscation of property in the hands of truly blameless parties." *Id.* at 12.

To the contrary, however, the federal government is already using its broad interpretation of the relation back doctrine in a nation-wide campaign to forfeit the real property tax liens of "truly blameless parties" – namely state and local governments and schoolboards. In all of its forfeiture actions nationwide, the federal government maintains that the relation back doctrine requires it to forfeit the drug trafficker's property *and* all state, county, city, and school board real property tax liens that attached to the property after the date of the criminal act giving rise to the forfeiture. Office of Legal Counsel, U.S. Department of Justice, *Liability of the United States For State and Local Taxes On Seized and Forfeiture Property* (July 9, 1991) (attached as appendix A).

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[1] The parties' letter of consent have been filed with the Clerk pursuant to Rule 37.3 of this Court.

In one recent case, for example, the federal government brought a forfeiture action in 1991, alleging that a parcel of real estate had been purchased with drug proceeds in 1982, and was therefore immune from state and local taxes *as of 1982. United States of America v. All That Tract Or Parcel Of Land Commonly Known As 2350 N.W. 187 Street, Miami, Florida*, No. 1:91-cv-247-RHH (N.D. Ga. Nov. 13, 1991) Slip op. at 8, 10, 14, *appeal pending*, Case No 91-9110 (11th Cir.). The federal government maintains that the relation back doctrine makes a property immune from state taxation, even if the taxes were paid by someone other than the federal government and even if the federal government itself leases the property to private individuals for private use after the date of the seizure. *United States v. A Single Family Residence Located At 3181 S.W. 138th Place, Miami, Florida*, 778 F. Supp. 1570, 1575 (S.D.Fla. 1991), *appeal pending*, Case No. 91-6126 (11th Cir.). Under its interpretation, the federal government could force state and local governments to turn over to it real estate taxes that the local governments had collected and spent years before the forfeiture action was ever filed.[2]

The federal government has announced that the Attorney General's discretionary power to grant remission pursuant to 28 U.S.C. section 524 is not available under any circumstances to pay state and local real property tax liens that accrue after the date of the illegal act

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[2] Already, when the federal government uses the relation back doctrine to forfeit the liens of innocent purchasers of state tax certificates, the federal government advises the tax certificate holders to obtain refunds from the state. *See, e.g.*, Letter U.S. Attorney Lehtinen to Adelman (attached as appendix B).

giving rise to the forfeiture: "the Attorney General's authority to grant remission of forfeiture is insufficient to permit payment of tax liens attaching after the relevant offense, for such relief can only be granted if the petitioner 'has a valid, good faith interest in the seized property as owner or otherwise.' " *Office of Legal Counsel Memo.*, at App. A-7.

The federal government's interpretation disrupts the Florida law of taxation and real property. Basically, state tax liens are treated under state law like federal tax liens are treated under federal law: once a tax lien attaches, the government "has an interest in the property and becomes in a sense a co-owner of it to the extent of the lien." *Welsh v. United States*, 220 F.2d 200, 203 (D.C. Cir. 1955). *See, e.g., United States v. Metropolitan Life Ins. Co.*, 256 F.2d 17, 25 (4th Cir. 1958). Florida law provides state tax liens with the highest priority: "All taxes imposed pursuant to the State Constitution and laws of this state shall be a first lien, superior to all other liens, on any property against which the taxes have been assessed . . . " Section 197.122, Fla. Stat. This lien arises as of January 1st of the tax year. *Id.* After attaching to the property, the tax lien constitutes a property interest held by the State "superior to all other liens or property interests" and "[a]ny and all vested rights, whether the interest be fee-simple or that of a mortgagee, vested remainderman or lessee for a term, must yield to the sovereign taxing power. . . . " *Riviera Club v. Belle Mead Dev. Corp.*, 194 So. 783, 785 (Fla. 1939).

Moreover, the federal government's contention disrupts the budgetary process of Florida. Florida law requires local governments to first determine the tax roll, then determine their budgets, and then to adjust their

millage rates to assure that the taxes collected are sufficient to meet budgeted needs. *See, e.g., Board of County Commissioners of Marion County v. Mckeever*, 436 So.2d 299, 301 (Fla. 4th DCA 1983). The federal government's interpretation of the relation back doctrine disrupts the State budgetary process by removing properties from the tax roll *years after* the State, counties, and schoolboards have calculated their budgets based on the reasonable belief that those properties would remain on the tax roll. In *2350 N.W. 187 Street, supra*, for example, there was no way for local governments to know at the time they taxed the property in 1982, 1983, or 1984, that the federal government would bring a forfeiture action in 1991 seeking to remove the property from the tax roll as of 1982. In the long run, the federal government's interpretation could undermine the balanced budget provisions of state constitutions.

In the current hard fiscal times, the federal government's policy of forfeiting state tax liens is hitting state and local governments where it hurts. Dade County, Florida alone is threatened with the loss of over $756,226.79 in actual tax dollar revenues for unpaid real estate tax liens that accrued on property prior to any final judgment of forfeiture. *See* Motion For Judicial Notice, Case No. 91-9110 (11th Cir. Feb. 26, 1992) (containing copies of the 92 claims filed by Dade County in federal forfeiture actions as of February, 1992). If this number is projected out over the thousands of counties in the Nation, it is apparent that the negative fiscal impact on local governments and schoolboards is massive.

Nor is the federal government's seizure of state and local tax liens justified by the federal government's sharing of forfeiture proceeds with local governments. By law,

that shared revenue is dedicated to law enforcement only. It is no comfort to a schoolboard, for example, that when its tax liens are forfeited, a portion is given to the local police department. As a matter of federalism and comity, it is for the state and local governments, not the federal government, to decide if the state and local real estate taxes should be used to hire a school teacher rather than a policeman.

SUMMARY OF ARGUMENT

This Court should reject the federal government's interpretation of the relation back and innocent owner provisions of the civil forfeiture laws that the innocent owner exception *never* applies to owners whose interests vest *after* the date of the illegal act giving rise to the forfeiture. U.S. Initial Brief at 14. It is false for the federal government to state that its interpretation "will not result in the confiscation of property in the hands of truly blameless parties." U.S. Initial Brief at 12. The federal government's contention inevitably leads to the forfeiture of the property interests of many innocent owners.

In fact, the federal government's interpretation is already at the heart of its current campaign to forfeit the real property tax liens of state and local governments and schoolboards that accrued on property targeted for forfeiture after the date of the illegal act. *See Office of Legal Counsel Memo.* (attached as appendix A). State and local governments and schoolboards were not the intended targets of the drug forfeiture laws. The Court should reject the federal government's interpretation which leads

to the absurd and unintended result of treating state and local governments as if they were the enemies in the war on drugs.

The federal government's theory is also contrary to the clear language of the statute. Section 881(h) of Title 21, known as the relation back provision, states: "All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to the forfeiture under this section." At first glance, this language appears to support the federal government's interpretation. To determine exactly what property is subject to subsection 881(h), however, it becomes necessary to examine subsection 881(a).

A review of subsection (a) reveals the fallacy of the federal government's position because subsection (a) specifically excludes from its ambit the property of an innocent owner. For example, subsection (a)(6), in describing the types of drug proceeds that are subject to forfeiture, states: "no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner." Section 881(a) of Title 21. "Reading subsection (h) of section 881 in tandem with subsection (a), it becomes clear that the 'right, title, and interest' that vests in the United States upon commission of the unlawful act comprises only so much of the property as is 'subject to forfeiture' under the appropriate division of subsection (a). The words of 881(a) . . . do not support the government's assertion that the innocent owner's interest amounts to whatever is left over after

the government has effected the forfeiture." *United States v. One Single Family Residence With Out Buildings Located at 15621 S.W. 209th Ave.*, 894 F.2d 1511, 1516 (11th Cir. 1990).

The idea that an innocent owner's interest can never arise after the criminal act is at odds with the language of section 881(a)(6) which recognizes an innocent owner's interest in the "proceeds" of drug transactions. As three Fourth Circuit judges stated in concurring to an en banc decision, "[the federal government's] interpretation would seem impossible to square with the plain language of section 881(a)(6) which expressly encompasses *'proceeds traceable to . . . an exchange'* of controlled substances. How can one obtain drug deal proceeds before the transaction even takes place?" *In the case of One 1985 Nissan, 300ZX*, 889 F.2d 1317, 1322 (4th Cir 1989) (Murnaghan, J., Ervin, C.J., Phillips, J. concurring). In the legislative history, Senator Nunn, among others, stated that an innocent owner would have a protectable interest even in property "derived from an illegal transaction." *See infra*, at 16. For the federal government to be correct, Senator Nunn must have completed misunderstood the amendment he was sponsoring.

To agree with the federal government, the Court must hold that the term innocent "owner," as used in the civil forfeiture provision of section 881, is narrower than, and does not even encompass, "bona fide purchasers," the term used in the criminal forfeiture provisions of section 853. But the term "bona fide purchaser" obviously represents a sub-class of the broader category "innocent owner:" "bona fide purchasers" are only one example of

the many possible types of "innocent owners." The federal government's interpretation distorts the plain meanings of these words. It also is in direct conflict with the cases and authorities providing innocent owner status in civil forfeitures to bona fide purchasers who obtain their interest after the illegal act. *See, e.g., United States v. One Single Family Residence*, 731 F. Supp. 1563, 1569 (S.D. Fla. 1990).

If the Court were to accept the federal government's contention, innocent owners have *more* protections under the criminal forfeiture provisions, which the federal government maintains protects bona fide purchasers, than under the civil forfeiture provisions, which the federal government maintains do not protect bona fide purchasers. This interpretation leads to the absurd result that property that is exempt from criminal forfeiture by virtue of a transfer to a bona fide purchaser would still be subject to civil forfeiture. Thus, under the federal government's interpretation, protections for innocent owners established in the criminal forfeiture provision could be avoided by bringing a separate civil forfeiture action. The federal government's interpretation has Congress protecting the bona fide purchaser's interest with one hand and grabbing that interest with the other hand.

Indeed, the accepted interpretation of a similar innocent owner provision of another forfeiture law is at odds with the interpretation advanced by the federal government in this case. *See, Florida Dealers and Growers Bank v. United States*, 279 F.2d 673, 677 (5th Cir. 1960) ("As we read it, this language [protecting innocent owners] may include an interest acquired by an innocent person *after illegal use.*") (emphasis added).

Finally, the federal forfeiture laws would be unconstitutional if they meant what the federal government says they mean. In *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 689-90, 94 S.Ct. 2080, 2094-95, 40 L.Ed.2d 452 (1974), this Court stated a forfeiture statute would be unconstitutional if it did not make an exception for an innocent owner "who proved not only that he was uninvolved in and unaware of the wrongful activity, but also that he had done all that reasonably could be expected to prevent the proscribed use of his property." The import of *Calero-Toledo* is that truly innocent parties cannot be subject to forfeiture. Yet the federal government would have the Court adopt an interpretation that allowed that result.

In the final analysis, the dual purposes of the drug forfeiture laws are (1) to break the economic back of drug traffickers, and (2) to protect innocent parties from the harsh results of forfeiture. Both of these Congressional purposes would be served by interpreting the innocent owner and relation back provisions together to mean that subsequent transfers are voidable when they are voluntarily made by the drug trafficker in order to fraudulently hide assets from forfeiture. Certainly, there is no reason to interpret the relation back doctrine to forfeit state and local real estate tax liens that arose after the date of the illegal act but before the date of the final judgment of forfeiture. For these reasons, the federal government's overreaching, harsh, and draconian interpretation of section 881, which would result in the forfeiture of state and local real estate tax liens, should not be adopted by this Court.

ARGUMENT

STATE AND LOCAL GOVERNMENTS AND SCHOOL-BOARDS WHOSE REAL PROPERTY TAX LIENS ARISE AFTER THE DATE OF THE ILLEGAL ACT ON WHICH THE FORFEITURE IS BASED CAN BE STATUTORY INNOCENT OWNERS UNDER 21 U.S.C. SECTION 881(a)(6).

(1) Section 881(a) Specifically Excludes From Forfeiture And From The Relation Back Doctrine The Property Of An Innocent Owner.

In its brief, the federal government argues that "only persons who owned the property before commission of the illegal acts giving rise to forfeiture can avail themselves of the innocent owner defense." U.S. Brief at 11. This conclusion results from the federal government's contention that the relation back doctrine must be applied to the property interest of the drug dealer *and* the property interest of the innocent owner. U.S. Brief at 11, 28-29. But the federal government misreads the statute. Contrary to the federal government's contention, both the Third Circuit and the Eleventh Circuit held that Congress wrote the civil forfeiture statute in such a way to insure that the relation back doctrine would not be applied to forfeit the property interest held by innocent owners.

Section 881(h), known as the relation back provision, provides: "All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to the forfeiture under this section." At first glance, this language appears to support the federal government's interpretation. To determine exactly what property is subject to subsection (h), however, it becomes necessary to

examine subsection (a). Here, the federal government's position breaks down because subsection (a) specifically excludes from its ambit the property of an innocent owner. For example, subsection (a)(6), which concerns the proceeds of drug transactions reads:

> (a) The following shall be subject to forfeiture to the United States and no property right shall exist in them:
>
> * * *
>
> (6) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this subchapter, all proceeds traceable to such an exchange . . . *except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.*

Section 881(a) of Title 21 (emphasis added). Under this language, the property that is described as being subject to forfeiture specifically excludes the property interest of an innocent owner.

In this regard, the Third Circuit properly held that *the relation back doctrine simply does not apply to the interest of an innocent owner.* The Third Circuit explained:

> We disagree with [the relation back analysis of the federal government]. Again we must read the plain language of the statute as Congress must have intended it by the words and structure it carefully chose. Section 881(h) vests title in the United States *in that property described in subsection (a).* Subsection (a) sets forth that property which is subject to forfeiture and it also provides for "innocent owner" defenses. Consequently, the property referred to in subsection (a) does *not* include property that has been exempted from forfeiture by means of an innocent owner defense. Logically then one must first ascertain whether the property at issue is not forfeitable because of an innocent owner defense before applying section 881(h). If the property is exempted from forfeiture pursuant to an innocent owner defense and therefore is not forfeitable property under subsection (a), then section 881(h) does not apply to such property that is not subject to forfeiture.

United States v. A Parcel of Land Known as 92 Buena Vista Ave., 937 F.2d 98, 102 (3rd Cir. 1991) (emphasis in original; footnote omitted).

Significantly, the Eleventh Circuit used similar reasoning in one of its leading cases interpreting the interaction of subsection (h) with subsection (a). In *United States v. One Single Family Residence With Out Buildings Located at 15621 S.W. 209th Ave.*, 894 F.2d 1511, 1516 (11th Cir. 1990), the Eleventh Circuit rejected the federal government's position that forfeiture pursuant to the relation back doctrine should occur before determination of the interest of the innocent owner.

The Eleventh Circuit reasoned:

> Reading subsection (h) of section 881 in tandem with subsection (a), it becomes clear that the "right, title, and interest" that vests in the United States upon commission of the unlawful act comprises only so much of the property as is "subject to forfeiture" under the appropriate

> division of subsection (a). The words of 881(a) . . . do not support the government's assertation that the innocent owner's interest amounts to whatever is left over after the government has effected the forfeiture.

894 F.2d at 1516. "Instead," the Eleventh Circuit concluded, "the government obtains through forfeiture whatever interest remains in the property after the innocent owner's interest has been excepted." *Id.*

Thus, the Third Circuit and the Eleventh Circuit independently reached the same conclusion in interpreting the interaction of the relation back doctrine of subsection (h) with the innocent owner provision of subsection (a). Both Circuit Courts rejected the interpretation that the federal government urges on this Court.

Curiously, the federal government has repeatedly and successfully argued that the relation back provisions of state forfeiture laws (virtually identical to the relation back provision of section 881), do *not* destroy the interest of one innocent owner – the tax lien of the IRS – even if the tax lien arose and attached *after* the date of the illegal act giving rise to the forfeiture. *See, e.g., United States v. Wingfield,* 822 F.2d 1466, 1475 (10th Cir. 1987), *cert. dismissed sub nom County of Boulder v. United States,* 486 U.S. 1019, 108 S.Ct. 1762 (1988); *State of Connecticut v. Bucchieri,* 407 A.2d 990, 995 (Conn. S.Ct. 1978). It is disingenuous for the federal government to now urge a different standard simply because in this case it is the government entity making the forfeiture, instead of the government entity seeking to protect its tax lien. Fairness, Comity, and Federalism require that the federal forfeiture statutes be interpreted in a manner similar to the interpretation of

state forfeiture statutes advanced by the federal government when it was an innocent owner trying to protect its interest that arose after the date of the illegal act.

(2) Section 881(a)(6) States That An Innocent Owner Can Obtain A Protectable Interest In "Proceeds" Of Drug Transactions.

The federal government's contention that an innocent owner's interest can *never* arise *after* the date of the criminal act on which the forfeiture is based, *see, e.g.,* U.S. Initial Brief at 5, 14, 25, 29, conflicts with another aspect of the civil forfeiture statute. Section 881(a)(6) of Title 21 specifically provides for an innocent owner exception from forfeiture for "proceeds traceable to . . . an exchange." This statutory language indicates that the interest of an innocent owner can arise after the illegal exchange. Otherwise there could never be an innocent owner of "proceeds" because proceeds do not occur until after the criminal act. As the concurring judge in *Nissan* explained:

> I reject the view that 21 U.S.C. section 881(h) forbids anyone from qualifying as an innocent owner if he or she acquired the money or property *after* the illegal transaction. Such an interpretation would seem impossible to square with the plain language of [the innocent owner provision of] section 881(a)(6) which expressly encompasses *"proceeds traceable to . . . an exchange"* of controlled substances.

"How," the judge demanded, "can one obtain drug deal proceeds before the transaction even takes place?" *Nissan,*

889 F.2d at 1322 (Murnaghan, J., Ervin, C. J., Phillips, J. concurring in en banc decision) (emphasis in original).

The legislative history supports the conclusion of the concurring judges in *Nissan*. The innocent owner language of section 88(a)(6) resulted from an amendment offered by, among others, Senator Nunn who explained that the intent of the innocent owner language was "to make it clear that a bona fide party who has no knowledge or consent to the property he owns having been derived from an illegal transaction, that party would be able to establish that fact under this amendment and forfeiture would not occur." Remarks of Senator Nunn, 124 Cong. Rec. S23057 (July 27, 1978), *cited in United States v. Property Known as 6109 Grubb Road*, 886 F.2d 618, 625 (3rd Cir. 1989).

In commenting on the innocent owner amendment, Senator Culver stated "that the original language could have been construed to reach properties traceable to the illegal proceeds but obtained by an innocent party without knowledge of the manner in which the proceeds were obtained. The original language is modified in the proposed amendment in order to protect the individual who obtains ownership of proceeds with no knowledge of the illegal transaction." Remarks of Senator Culver, 124 Cong.Rec. 23056 (July 27, 1978), *cited in 6109 Grubb Road*, 886 F.2d at 625.

Both Senator Nunn's and Senator Culver's comments establish that an innocent owner will be protected from forfeiture even if the property he owns was "derived from an illegal transaction" or was "traceable to illegal proceeds." For the federal government's position to be

correct, both of these Senators had to completely misunderstand the meaning of the amendment they were sponsoring.

After reviewing this legislative history, one judge concluded, "as 'proceeds' under section 881(a)(6) necessarily bear the imprimatur of a *prior* illegal transaction, Congress' enactment of the innocent exception to that section serves to underscore the ability of a subsequent transferee, under certain circumstances, to obtain innocent owner status." *United States v. One Single Residence at 2901 S.W. 118th Court, Miami, Florida*, 683 F. Supp. 783, 787 (S.D. Fla. 1988).

(3) Contrary To The Federal Government's Contention, The Term Innocent "Owner" Used In The Civil Forfeiture Statute Is Broader Than The Term "Bona Fide Purchaser" Used In The Criminal Forfeiture Statute.

Yet another fallacy of the federal government's reasoning is that it requires the Court to adopt an interpretation of the term "owner" as used in the civil forfeiture provision of section 881 that is narrower than the term "bona fide purchaser" used in the criminal forfeiture provision of section 853. This interpretation strains the common meaning of these words and leads to several absurd results.

In the criminal forfeiture statute, the only innocent parties protected from forfeiture are "bona fide purchasers." *See* 21 U.S.C. section 853. In the civil forfeiture statute at issue here, however, Congress omitted the limiting language and used the much broader term innocent

"owner," which includes not only bona fide purchasers but also other innocent parties who acquire a interest in property targeted for forfeiture after the date of the act giving rise to the forfeiture.

Congress clearly intended the civil forfeiture provision to offer more protection to innocent parties than the criminal forfeiture provision. As the Third Circuit reasoned:

> The Criminal Forfeiture Statute, section 853, is explicitly limited to bona fide purchasers for value, while in section 881 Congress omitted such limiting language. We believe that such a difference was intended by Congress. . . . In section 881, Congress chose to utilize the broad term "owner." Therefore, rather than reading into section 881 a requirement that an owner be a bona fide purchaser for value, we conclude that Congress intended to omit the bona fide purchaser for value requirement in that section.

Buena Vista, 937 F.2d at 102. The Court concluded, "we hold that [a party] need not be a bona fide purchaser for value to raise an innocent owner defense pursuant to 881(a)." *Id.*

This result is in accord with the remedial purpose of the innocent owner provision which is to protect innocent parties from forfeiture. The Eleventh Circuit stated, "The term 'owner' should be broadly interpreted to include any person with a recognizable legal or equitable interest in the property seized. Specifically the property would not be subject to forfeiture unless the owner of such property knew or consented to the fact that the property was used for or traceable to illegal drug activities."

United States v. One Single Family Residence With Out Buildings Located At 15621 S.W. 209th Ave., 894 F.2d 1511, 1514 (11th Cir. 1990). This is so because "[w]hen the forfeiture statutes are viewed in their entirety, it is manifest that they are intended to impose a penalty only upon those who are significantly involved in a criminal enterprise." *Id.* at 1516, *quoting United States v. United States Coin & Currency,* 401 U.S. 715, 721-22, 91 S.Ct. 1041, 1044-45 (1971).

This result is in accord with the principle that civil forfeiture should offer more protections to innocent parties than is necessary in criminal forfeiture, when the criminal defendant is a party and the purpose of the forfeiture is to punish that criminal defendant.

The Third Circuit's reasoning also avoids several absurdities that follow from the federal government's interpretation. In the first place, the federal government's interpretation requires the Court to assume that the term innocent "owner" is narrower than, and does not even encompass, "bona fide purchasers." But the term "bona fide purchaser" obviously represents a sub-class of the broader category "innocent owner:" "bona fide purchasers" are only one example of the many possible types of "innocent owners." The federal government's interpretation distorts the plain meanings of these words.

In addition, the federal government's interpretation cannot be reconciled with the many cases holding that the interest of a bona fide purchaser is protected from civil forfeiture. Three judges of the Fourth Circuit, concurring in an en banc decision, explained why the innocent

owner provision of civil forfeiture must extend at least as far as bona fide purchasers:

> Great injustice would result if no one who obtained property once the drug transaction had occurred could qualify for the innocent owner exception in section 881(a)(6). It seems manifestly unfair to penalize an innocent person who has provided something of value in exchange for property that, unbeknownst to him, had been used in or derived from drug trafficking. If a drug dealer should buy a car from a perfectly reputable auto dealership with proceeds from drug sales, apparently, under the majority's opinion, the government could use civil forfeiture to take away the money paid to the car dealer, even though the dealer was entirely unaware that he had sold the automobile to a drug dealer. I do not believe that Congress intended such a result. The most logical approach is to read sections 881(h) and 881(a)(6) as allowing, as an exception to retroactive forfeiture, *bona fide* purchasers *for value* to qualify as innocent owners exempt from civil forfeiture, even though the transaction postdates the drug transaction.

In the case of One 1985 Nissan, 300ZX, 889 F.2d 1317, 1322 (4th Cir 1989) (Murnaghan, J., Ervin, C.J., Phillips, J. concurring). The federal government's interpretation simply cannot be reconciled with the cases protecting bona fide purchasers.[3]

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[3] Other courts have already recognized this exception for bona fide purchasers. *See, e.g., United States v. One Single Family*

(Continued on following page)

Finally, because the federal government maintains that the innocent owner provision of the civil forfeiture laws does not even protect bona fide purchasers, U.S. Initial Brief at 32, its interpretation means that innocent owners have *more* protections under the criminal forfeiture provisions of section 853 than under the civil forfeiture provisions of section 881. Thus, a bona fide purchaser's interest in property would be protected from forfeiture in a criminal forfeiture action, but would still be subject to forfeiture in a separate civil forfeiture action. The federal government's interpretation has Congress protecting the bona fide purchaser's interest with one hand and grabbing that interest with the other hand. It is absurd to interpret the drug forfeiture statutes as being so much at cross-purposes with each other. This Court should not construe a statute to impute to Congress "a purpose to paralyze with one hand what it sought to promote with another." *American Paper Institute, Inc. v.*

(Continued from previous page)

Residence, 731 F. Supp. 1563, 1569 (S.D. Fla. 1990) (recognizing innocent owner status of party who purchased after criminal act: "the government's position to the contrary is not supported by the legislative history."); *United States v. One Parcel of Real Estate Located on Fellows Tracts C, D, E, and F of Pine Island Estates*, 715 F. Supp. 360, 363 (S.D. Fla. 1989) (recognizing innocent owner status of persons who purchased property after criminal act and after federal government filed forfeiture action). *See, also, United States v. One 56-Foot Motor Yacht Named Tahuna*, 702 F.2d 1276 (9th Cir. 1983) (person who purchased after date of illegal act had standing to contest forfeiture). This approach has been applauded by the legal commentators. Comment, *Tempering the Relation-Back Doctrine: A More Reasonable Approach to Civil Forfeiture In Drug Cases*, 76 Vir.L.Rev. 165, 186 (1990).

American Electric Power Service Corp., 461 U.S. 402, 421 (1983).

As the Third Circuit properly held, "to interpret section 881(h) in the manner suggested by the government would essentially serve to emasculate the innocent owner defense provided for in section 881(a)(6). No one obtaining property after the occurrence of the drug transaction – including bona fide purchasers for value – would be eligible to offer an innocent owner defense on his behalf." *Buena Vista*, 937 F.2d 102.

(4) The Federal Government's Interpretation Conflicts With The Interpretation of The Innocent Owner Provision of Another Forfeiture Law.

In *Florida Dealers and Growers Bank v. United States*, 279 F.2d 673, 677 (5th Cir. 1960), the Fifth Circuit interpreted the relations back and innocent owner provisions of another federal forfeiture act. *Florida Dealers and Growers* held that, notwithstanding the relations back provision, an innocent owner's interest could arise after the act that forms the basis of the forfeiture. The Court reasoned,

> If illegal use automatically destroyed all subsequent rights to mitigation of forfeiture, as the Government contends, it would be useless in a forfeiture proceeding for a claimant to prove he had no knowledge or reason to believe that the car was being illegally used. Such a construction would render that portion of the statute meaningless. *It would go a long way toward defeating the purpose of the statute, for it would protect only those claimants who acquired their interest before the illegal use.* This would allow the government to wait at its own pleasure and, perhaps long after the illegal use, seize and libel a vehicle thereby depriving any number of subsequent good faith vendees, mortgagees, or assignees of conditional sales contracts of the opportunity to petition for remission of forfeiture. We cannot accept such an interpretation.

Id. (emphasis added). The Court concluded, "As we read it, *this language [protecting innocent owners] may include an interest acquired by an innocent person after illegal use.*" *Id.* (emphasis added). The same reasoning applies with equal force to section 881(a)(6). The purpose of 881(a)(6) would be defeated in large part if it protected only claimants who acquired their interest before the illegal act.

(5) Congress Intended That The Relation Back Doctrine Apply Only To "Certain" Subsequent Transfers – Voluntary Transfers Intended To Fraudulently Hide Assets – Not To "All" Subsequent Transfers.

The main premise of the federal government's argument is that the relation back doctrine was intended to void *all* subsequent transfers by the drug trafficker. Thus, for example, the federal government states that "the 1984 committee report expresses the view that *all* transfers of 'tainted' property by drug offenders were 'voidable' in civil forfeiture proceedings. . . . " U.S. Initial brief at 33, n.11 (emphasis added). But a review of the legislative history reveals the contrary. Congress intended only that "*certain*," not "all" subsequent transfers be voidable.

The Senate report to the 1984 amendment to the Drug Forfeiture Act, which created Section 881(h), states:

> Under this [relation back] theory, forfeiture relates back to the time of the acts which give rise to the forfeiture. The interest of the United States in the property is to vest at that time, and *is not necessarily* extinguished simply because the defendant subsequently transfers his interest to another. Absent application of this principle a defendant could attempt to avoid criminal forfeiture by transferring his property to another person prior to conviction.
>
> The purpose of this provision is to permit the voiding of *certain* pre-conviction transfers and so close a potential loophole in current law whereby the criminal forfeiture sanction could be avoided by transfers that were not "arms' length" transactions.

S. Rep., No. 98-225, 98th Cong., 2d Sess., *reprinted in* 1984 U.S. Code Cong. & Ad. News 3182, 3383-84. (emphasis added).[4]

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[4] The "relation back" doctrine was inserted into three different forfeiture statutes 18 U.S.C. §1963(c); 21 U.S.C. §853; and 21 U.S.C. §881(h) by the same Congressional Act, P.L. 98-973. When reviewing the "relation back" provision of 881(h), the Senate Report refers the reader back to its earlier discussion of the "relation back" doctrine contained in the same report S. Rep. No. 98-225, 98th Cong. 2d Sess., *reprinted in* 1984 U.S. Code Cong. & Ad. News at 3398. Thus, the above-cited text applies to all three statutory uses of the "relation back" doctrine.

This legislative history is critical to interpreting section 881(h). It makes clear that the legal fiction of "relation back" is intended to prevent the criminal defendant from fraudulently transferring his property to another person in an attempt to avoid a forfeiture. Contrary to the statement by the federal government, Congress did not intend the relation back doctrine to void "all" subsequent transfers. Instead, Congress intended the relation back doctrine to void only "certain" subsequent transfers – those subsequent transfers that were made voluntarily by the drug trafficker in order to fraudulently avoid forfeiture. When the legislative history states that the federal government's interest "is not necessarily extinguished" by a subsequent transfer, the language clearly implies that there will be circumstances in which a subsequent transfer does "extinguish" any interest that otherwise would be created by the relation back doctrine.

This interpretation is in full accord with the two purposes of the drug forfeiture laws. The first purpose of the Drug Forfeiture Act, 21 U.S.C. §881 *et seq.*, is to break the economic back of drug traffickers. The Act is premised on a finding by Congress "that the conviction of individual racketeers and drug dealers would be of only limited effectiveness if the economic power bases of criminal organizations or enterprises were left intact. . . . " S. Rep. no. 98-225, 98th Cong. 2d Sess. *reprinted in* 1984 U.S. Code Cong. & Adm. News 3374. Accordingly, the Drug Forfeiture Act was designed "to strip these offenders and organizations of their economic power." *Id. See also Caplin & Drysdale, Char. v. United States*, ___ U.S. ___, 109 S.Ct. 2646, 2654-55 (1989) (purpose is "to lessen the economic

power of organized crime and drug enterprises" and to strip criminals "of their undeserved economic power.") (citations omitted).

In addition, however, Congress expressed a clear intention that the goals of the act – to punish and economically weaken criminals – were to be accomplished without injuring innocent parties. As the Eleventh Circuit recently concluded, the legislative history reflects "two interrelated aims of Congress: to punish criminals while ensuring that innocent persons are not penalized for their unwitting association with wrongdoers." *15621 S.W. 209th Ave.*, 894 F.2d at 1513.

Limiting the relation back doctrine to voluntary transfers by the drug trafficker that are intended to fraudulently hide assets from forfeiture is in full accord with the legislative history and would accomplish both of these Congressional goals. In contrast, the federal government's interpretation is contrary to the stated Congressional purpose of protecting innocent parties from forfeiture.

(6) The Federal Government's Interpretation Would Render The Forfeiture Laws Unconstitutional Under The Calero-Toledo Standard.

This Court has already suggested that the federal government's interpretation – which would forfeit the interests of all innocent owners who acquired an interest after the date of the act giving rise to forfeiture would be unconstitutional. *In Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 689-90, 94 S.Ct. 2080, 2094-95, 40 L.Ed.2d 452 (1974), this Court stated,

> [I]t would be difficult to reject the constitutional claim of an owner whose property had been taken from him without his privity or consent . . . Similarly, the same might be said of an owner who proved not only that he was uninvolved in and unaware of the wrongful activity, but also that he had done all that reasonably could be expected to prevent the proscribed use of his property; for in that circumstance, it would be difficult to conclude that forfeiture served legitimate purposes and was not unduly oppressive.

The federal government's reading of section 881 runs afoul of this standard because it categorically destroys the property interests of innocent owners who are subsequent transferees even if they were uninvolved and unaware of the criminal act. The import of this language is not limited to when an innocent party obtains an interest. Instead, the import is that the constitution proscribes the forfeiture of the property interest of a truly innocent party. Of course, the Fifth applies with equal force to federal takings of the property interests of state and local governments. *United States v. 50 Acres of Land*, 469 U.S. 24, 32 105 S.Ct. 451, 455, 83 L.Ed.2d 376 (1984).

Accordingly, this Court should reject the federal government's interpretation of section 881 in order "to avoid deciding difficult constitutional questions where the text fairly admits of a less problematic construction." *Public Citizen v. United States Department of Justice*, ___ U.S. ___, 109 S.Ct. 2558, 105 L.Ed.2d 377 (1989).

CONCLUSION

Contrary to the clear Congressional purpose to protect innocent owners, the federal government's interpretation would automatically and inevitably lead to the confiscation of the property of many truly blameless and innocent parties. In fact, the federal government's interpretation is at the heart of its current nationwide campaign to forfeit the real property tax liens of innocent state and local governments and schoolboards. However this Court should decide the dispute presented by the individual facts of this case, it is respectfully requested that this Court not adopt the broad and overreaching interpretation of the relation back doctrine urged by the federal government.

Respectfully submitted,
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June 1992

APPENDIX A

(SEAL)

U.S. Department of Justice
Office of Legal Counsel

Office of the
Deputy Assistant Attorney General

Washington, D.C. 20530

July 9, 1991

MEMORANDUM TO GEORGE J. TERWILLIGER, III
Associate Deputy Attorney General

Re: Liability of the United States for State and Local Taxes on Seized and Forfeited Property

This memorandum responds to your request for our opinion whether property seized by, and ultimately forfeited to, the federal government is subject to taxation by state and local authorities.[1] We conclude that principles of intergovernmental tax immunity, combined with long-standing rules governing forfeiture and the express language of modern forfeiture statutes, establish that property ultimately forfeited to the federal government is not subject to state and local taxes arising after the date of an offense that leads to the order of forfeiture.[2]

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[1] This memorandum confirms oral advice we provided earlier to Cary H. Copeland, Director, Executive Office of Asset Forfeiture.

[2] Currently, "[t]he [Justice] Department's position is that the doctrine of sovereign immunity precludes the payment of State and local taxes on property which has been seized for federal forfeiture." Memorandum Re: Forfeiture Policies to

(Continued on following page)

Property actually forfeited to the United States is immune from taxation by state and local authorities in the absence of express congressional authorization. This doctrine finds its classic expression in *M'Culloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819). As the Court has subsequently explained, under *M'Culloch* "a State cannot constitutionally levy a tax directly against the Government of the United States or its property without the consent of Congress." *United States v. City of Detroit*, 355 U.S. 466, 469 (1958). *See also Cotton Petroleum Corp. v. New Mexico*, 109 S.Ct. 1698, 1707 (1989) ("absent express congressional authorization, a state cannot tax the United States directly"); *United States v. Allegheny County*, 322 U.S. 174, 177 (1944) (the "possessions, institutions, and activities of the Federal Government itself in the absence of express congressional consent are not subject to any form of state taxation").[3] Once property is forfeited to the United States, an attempt by a state or local government

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United States Attorneys Offices, *et al.*, from Cary H. Copeland, Director, Executive Office for Asset Forfeiture, July 3, 1990, at 1. Under this policy, the "date of the seizure marks the imposition of sovereign immunity." *Id.* at 2. The Department, therefore, "will not pay State or local taxes incurred after the property is seized for forfeiture." *Id.*

[3] The federal government's tax immunity has been described as a function of the supremacy of federal law under Article VI of the Constitution, *M'Culloch*, 17 U.S. at 436 (describing tax immunity as "the unavoidable consequence of that supremacy which the constitution has declared"); *United States v. New Mexico*, 455 U.S. 720, 733 (1982), and as a function of sovereign immunity, *Kern-Limerick, Inc. v. Scurlock*, 347 U.S. 110, 122 (1954).

to tax that property in the absence of consent by the Congress is plainly invalid under the longstanding doctrine of intergovernmental tax immunity.[4]

The process of forfeiture presents the question whether that immunity might attach before the date on which the forfeiture is perfected by entry of an order of forfeiture. We conclude that it does, by operation of the relation back doctrine, which is codified in the major federal forfeiture statutes. For example, the provisions of federal law relating to civil forfeiture of certain drug-related property were amended by the Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, 98 Stat. 1837, 2051 (1984), to provide that "[a]ll right, title, and interest in property [subject to forfeiture] shall vest in the United States upon commission of the act giving rise to forfeiture under this section." 21 U.S.C. § 881(h). *See also* 18 U.S.C. § 1963(c) (same); 21 U.S.C. § 853(c) (same).[5]

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[4] If seized property is not ultimately forfeited to the federal government, the owner of the property would remain liable for state and local taxes.

[5] Some courts have held that the relation back doctrine, if not expressly set forth in the statute, is simply a rule of statutory construction that applies only to those statutes making forfeiture automatic rather than permissive. *See, e.g., United States v. Thirteen Thousand ($13,000) in United States Currency*, 733 F.2d 581, 584 (8th Cir. 1984); *United States v. Currency Totalling $48,318.08*, 609 F.2d 210 (5th Cir. 1980). *See generally* Note, *Tempering the Relation-Back Doctrine: A More Reasonable Approach to Civil Forfeiture in Drug Cases*, 76 Va. L. Rev. 165, 181-83 (1990). After the adoption of express relation back provisions in the major forfeiture statutes, these holdings would appear to be of limited practical significance.

Under this principle, which by 1890 was the "settled doctrine" of the Supreme Court with respect to forfeitures,

> whenever a statute enacts that upon the commission of a certain act specific property used in or connected with that act shall be forfeited, *the forfeiture takes effect immediately upon the commission of the act;* the right to the property then vests in the United States, although their title is not perfected until judicial condemnation; *the forfeiture constitutes a statutory transfer of the right to the United States at the time the offence is committed;* and the condemnation, when obtained, relates back to that time, and avoids all intermediate sales and alienations, even to purchasers in good faith.

United States v. Stowell, 133 U.S. 1, 16-17 (1890) (emphases added). *See also United States v. Grundy & Thornburgh*, 7 U.S. (3 Cranch) 337, 348-54 (1806); *Florida Dealers and Growers Bank v. United States*, 279 F.2d 673, 677 (5th Cir. 1960).

Under the relation back doctrine the United States' title to forfeited property, although not perfected until an order of forfeiture is entered, arises on the date of the offense giving rise to forfeiture. *Florida Dealers and Growers Bank*, 279 F.2d at 676 ("At th[e] moment [of the illegal act] the right to the property vests in the United States, and when forfeiture is sought, the condemnation when obtained relates back to that time . . . "); *United States v. One Single Family Residence*, 731 F.Supp. 1563, 1567 (S.D. Fla. 1990) ("A final judgment of forfeiture merely confirms the government's interest . . . "). Because the interest of the United States arises on the date of the

offense, the federal government's tax immunity mandates that no state and local tax obligations may attach to the property after that date absent congressional authorization.

We have identified no congressional authorization sufficient to permit payment of state and local tax obligations arising after title to the property vests in the United States. Authority to pay state and local taxes on federally-owned property requires "express congressional authorization" to waive tax immunity. *Cotton Petroleum Corp. v. New Mexico*, 109 S.Ct. at 1707. *See also Kern-Limerick, Inc. v. Scurlock*, 347 U.S. at 122 (court will not "subject the Government or its official agencies to state taxation without a clear congressional mandate").[6] None of the relevant statutory provisions contains such authorization.

Although the statutory forfeiture provisions do contain some exceptions, none of those exceptions contemplates payment of state and local taxes. The exceptions to the criminal forfeiture statutes for a "bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture," 18 U.S.C. § 1963(c), 21 U.S.C. § 853(c), provide no authority for payment of state and local taxes. These exceptions not only fail to contain an

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[6] An example of such an explicit authorization is 42 U.S.C. § 1490h ("All property . . . the title to which is acquired or held by the Secretary under this subchapter other than property used for administrative purposes shall be subject to taxation by a State, Commonwealth, territory, possession, district, and local political subdivisions in the same manner and to the same extent as other property is taxed").

express waiver of tax immunity, but also do not, in their general language, reach the asserted interest of taxing authorities in the property, for those authorities do not qualify as bona fide purchasers for value.

The civil forfeiture statute's somewhat broader exception for "innocent owners," 21 U.S.C. § 881(a)(6), as the Department has traditionally interpreted it, does not waive the government's tax immunity. It consistently has been the position of the United States that one cannot qualify as an innocent owner if the asserted ownership interest (broadly construed to include liens) arose after the date of the offense at issue.[7] Given this reading, which we have no occasion to question here, there is no statutory basis for permitting state and local tax liens arising after the date of the offense to qualify for payment under the exception.

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[7] *See, e.g, In Re One 1985 Nissan,* 889 F.2d 1317, 1320 (4th Cir. 1989); *United States v. One Single Family Residence,* 731 F.Supp. at 1568 ("The Government contends . . . that the innocent owner provision only applies to claimants who owned the property at the time of the offense, and not to those who acquired the property afterward"). Most courts that have considered this position have agreed that "[t]he innocent owner exception applies only to owners whose interest vests prior to the date of the illegal act that forms the basis for forfeiture." *Eggleston v. Colorado,* 873 F.2d 242, 248 (10th Cir. 1989), *cert. denied,* 110 S.Ct. 1112 (1990). *See, e.g., In Re One 1985 Nissan,* 889 F.2d at 1320; *United States v. One 1965 Cessna 320C Twin Engine Airplane,* 715 F.Supp. 808, 811 (E.D. Ky. 1989); *United States v. One Piece of Real Estate,* 571 F.Supp. 723, 725 (W.D. Tex. 1983). *Cf. One Single Family Residence,* 731 F.Supp. at 1567-69.

We also find no authorization for the payment of state or local taxes in either the Attorney General's authority under 28 U.S.C. § 524(c)(1)(D) to pay "valid liens" against forfeited property or his authority under 28 U.S.C. § 524(c)(1)(E) to grant remission or mitigation of forfeiture. Neither of these provisions contains the express congressional authorization necessary to pay state and local taxes on federal property. Nor do they describe a category of permissible actions that might arguably include payment of state and local tax claims. Although the lien provision may permit the Attorney General to recognize property interests – including tax liens – in forfeited property that existed prior to the date of the offense, it does not make valid otherwise invalid attempts by state and local taxing authorities to attach liens to property after title has vested in the federal government. In like fashion, the Attorney General's authority to grant remission of forfeiture is insufficient to permit payment of tax liens attaching after the relevant offense, for such relief can be granted only if the petitioner "has a valid, good faith interest in the seized property as owner or otherwise." 28 C.F.R. § 9.5(b)(1).[8]

Our conclusion is consistent with that of courts that have considered related questions. Most directly relevant is the Tenth Circuit's decision in *Eggleston v. Colorado, supra.* There, the court held that the State's tax claims were invalid because the asserted state tax liens did not exist until after the event giving rise to federal forfeiture.

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[8] Although the criteria governing mitigation are somewhat more general (*e.g.*, "to avoid extreme hardship"), 28 C.F.R. § 9.5(c), nothing in any relevant statute or in the regulations expressly refers to state and local tax claims.

Similarly, the court in *United States v. $5,644,540.00 in U.S. Currency*, 799 F.2d 1357, 1364 (9th Cir. 1986), upheld forfeiture of property against the claims of California tax authorities who were unaware of the property's existence until after the date of the offense leading to forfeiture.[9]

We conclude that the federal government's immunity from state and local taxes precludes payment of such taxes that arise after the date of an offense that gives rise to forfeiture. We have identified no authority that permits the Department to pay tax claims arising after that date.

Please let us know if we can be of further assistance.

/s/ John Harrison
John C. Harrison
Deputy Assistant
Attorney General
Office of Legal Counsel

cc: Cary H. Copeland
Director
Executive Office for Asset Forfeiture

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[9] *See also United States v. Trotter*, 912 F.2d 964, 966 n.2 (8th Cir. 1990) ("Since title vests 'in the United States,' other creditors, including state agencies, may not claim any part of the funds if the government successfully obtains forfeiture"). It should also be noted that, because tax immunity runs to the benefit of the States as against the United States, some federal courts have invalidated federal tax liens arising after the date of an offense leading to forfeiture to a State following the relation back doctrine. *Metropolitan Dade County v. United States*, 635 F.2d 512 (5th Cir. Unit B. Jan. 1981). *But see United States v. Wingfield*, 822 F.2d 1466, 1475 (10th Cir. 1987) ("the doctrine of relation back under state law cannot be held to subvert the constitutional power to lay and collect taxes").

APPENDIX B

U.S. Department of Justice

United States Attorney
Southern District of Florida

87-1146. LTR.dpg

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155 South Miami Avenue, Suite 700
Miami, Florida 33130

*653-5448

Thelma Adelman

October 23, 1991

Ms. Thelma Adelman
510 NE 199 Terrace
Miami, FL 33179

RE: United States v. Real Estate at 1942 N.W. 95th Street, Miami, FL.
Case No. 87-1146-Civ-Davis

Dear Ms. Adelman:

This will acknowledge receipt of the documents left at this office on October 15, 1991. Please be advised that this real property was purchased on June 20, 1983 by convicted drug dealer Isaac Hicks. On June 17, 1987 the United States commenced a forfeiture action against this property. On July 10, 1987 a public notice of action and arrest was published in the Miami Review which gave notice that any person claiming any interest in the property must appear no later than thirty days from the date of the publication and file a written verified claim. A review of this file, shows that no such claim was filed by you at such time or while this case was pending. On March 14, 1989, an Order On Trial and Final Judgment

was entered in this case in which the real property was forfeited to the United States.

Although the judgment of Forfeiture to the United States was entered in 1989, pursuant to the provisions of 21 U.S.C. §881(h), title in the property is vested in the United States as a matter of law and relates back to June 20, 1983 – the date in which it was purchased with illegal drug proceeds by Isaac Hicks. Since title vested in the United States in June of 1983 when it was purchased by Isaac Hicks with illegal drug proceeds, any attempts to impose state and local taxes upon said federal property after that period are invalid. Thus, there is no basis for you to go forward with a tax sale of this federally owned property as such taxes are not legally due and owing, and may not be legally imposed after June 1983.

Under these circumstances, it may be in your interest to redeem the tax certificates you have purchased and receive a refund from Metro Dade County. In any event, the document you filed with the United States District Clerk of Court on April 8, 1991, purporting to be a "claim" is a legal nullity. I trust this will fully respond to your inquiry.

Very truly yours,

DEXTER W. LEHTINEN
UNITED STATES ATTORNEY

/s/ Edward B. Gaines
EDWARD B. GAINES
ASSISTANT U.S. ATTORNEY
(305) 536-4796